

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**

**CIVIL SUIT NO. 215 OF 2016**

- 1. REGINA BENHAM**
- 2. PETER BEHNAM**
- 3. CATHERINE BENHAM**
- 4. HENRY NEWTON BENHAM ::::::::::::::::::::::::::::::::::: PLAINTIFFS**
- 5. ROSEMARY BENHAM**
- 6. WINFRED BENHAM**
- 7. SOLOMON BENHAM**

**VERSUS**

**ALEX LWAASA ::::::::::::::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE CORNELIA KAKOOZA SABIITI**

**RULING**

This is a ruling arising from the preliminary objection raised by the Plaintiffs that the defendant's Trial Bundle Items 1 and 2 this is to say, the Judgement and the record of Proceedings in Civil Suit No. 81/2010 that was in Makindye Court and dismissed for lack of Jurisdiction are inadmissible in Court as evidence.

*CVS 2016/291/10/21*  
The Plaintiffs relied on the case of Mujub Juma Vs Adam Musa & Ors CA 53/2015 HCT Land Division where the court stated that the proceedings conducted by a court without jurisdiction are a nullity and prayed that the two documents be expunged from the record as they cannot be relied upon for arising from a nullity and have no benefit to the court.

In reply, counsel for the Defendant submitted that the authority that the Plaintiff counsel relied on is not authority for the proposition that a judicial record arising from a lower court without jurisdiction cannot be tendered in evidence in a separate proceeding before the High Court since under section 73(a)(iii) of the Evidence Act, a judicial record is a public document which is admissible in evidence.

Counsel submitted further that under sections 64(4) and 76 of the Evidence Act a judicial Record is admissible provided it's a certified copy of the record. That the presumption of the law under section 78 of the Evidence Act is that a certified copy is presumed to be genuine and therefore what the court should consider is where the court that recorded that evidence was authorized to record the evidence sitting as a court of law and in its routine business and whether the person who recorded the evidence was under duty to record the evidence and did not have any notice to misrepresent the record of court. That in the case of Mujub Juma Vs Adam Musa & Ors CA 53/2015 HCT Land Division *supra* justice Mubiru held that provided the record of court is certified, the officer giving the record reflects it as true of the court then it is admissible as evidence.

Counsel submitted that the purpose of evoking the judgement and record of the lower court was to bring to the knowledge of the court the fact that the 1<sup>st</sup> Plaintiff had already testified on oath in the lower court over the same matter and the testimony was recorded.

Counsel relied on the case of Kaggwa Mitched Vs Olal Mark & 6 Ors C.A 010/2017 and submitted that the record of proceedings in the Defendant's Trial Bundle are admissible and can be relied upon in this court since the witness are not supposed to tell lies on oath. He also added that the admission of the said



evidence on the record will not prejudice the Plaintiff in any way and shall not require other witnesses to tender it in since it's self-reliant.

In rejoinder, counsel for the Plaintiffs submitted that in the case of **Desai Vs Warsama 1967 E.A 351**, court stated that the proceedings of a court without jurisdiction are a nullity and should be set aside as of right. He also submitted that the major reason for their objection is that the defendant wanted to admit documents that were admitted in another lower court in proceedings that were rendered a nullity.

It is also trite law that points of law can be raised at any stage of the proceedings whether or not they were pleaded in the pleadings: See also **Hon. Mr. Justice Bashaija K. Andrew in Mathias Lwanga Kaganda versus UEB CS No.124 of 2003.**

O.15 r. 2 Civil Procedure Rules dictates that once points of law are raised, Court has to resolve them first. In the *Supreme Court of **Uganda Telecom Ltd versus Zte Corporation CA No.03 of 2017***, Court held unanimously that a trial Court has discretion to dispose of a preliminary objection either at or after the hearing explaining, however, that the exercise of the discretion depends on the circumstances of each case.

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29/10/21*  
This is a point of law. Jurisdiction of Court can only be granted by law. If proceedings are conducted by a court without jurisdiction, they are a *nullity*. This was the case in **Desai versus Warsaw (1967) EA 351**. Therefore, any award or judgment arising from such proceedings of a Court without jurisdiction is also a *nullity*.

In **Bithum Charles Vs Adonge Sally Civil Appeal No. 0020 Of 2015** the court held that;

*"It is trite law that the jurisdiction of courts is a creature of statute. A court cannot exercise a jurisdiction that is not conferred upon it by law. Therefore, whatever a court purports to do without jurisdiction is a nullity ab initio. It is settled law that a judgment of a court without jurisdiction is a nullity and a person affected by it is entitled to have it set aside *ex debito iudicantis* (See **Karoli Mubiru and 21 Others v. Edmond Kayiwa [1979] HCB 212; Peter Mugoya v. James Gidudu and another [1991] HCB 63**). The proceedings and judgement of the L.CII Court relied upon by the appellant to found an argument for *res judicata* therefore are a nullity. In the circumstances, this ground of appeal fails."*

Given that in the above case, both proceedings and the judgement of the lower court were held to be a nullity for lack of jurisdiction, we can all agree that the process of testifying in court fits well within the meaning of "court proceedings". they would therefore render the testimony of the 1<sup>st</sup> Plaintiff in the lower court to be part of the proceeding of the lower court which once rendered void would include the said testimony to be void too.

*Handwritten: 29/10/21*  
Therefore, this court finds that the Judgement and the record of Proceedings in Civil Suit No. 81/2010 at Makindye Court were a nullity and given the scope of what entails proceedings, the evidence given by the 1<sup>st</sup> Plaintiff too is rendered void to be used in this court and thus cannot be admitted in court as evidence but will have to re-hear the evidence of the 1<sup>st</sup> Plaintiff so as to have it re-admitted in the high court.

In conclusion, I find that the Judgement and the record of Proceedings in Civil Suit No. 81/2010 and the objection is accordingly upheld.

It is so ordered

A handwritten signature in blue ink, appearing to read 'C. Kakooza Sabiiti', is positioned above the printed name.

CORNELIA KAKOOZA SABIITI

JUDGE

Date: 29<sup>th</sup> October 2021